

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
CHARLOTTE DIVISION
CIVIL ACTION NO. 3:12-CV-487-MOC-DCK**

| | | |
|---|---|---------------------|
| DAVID HOLMES, HERTA S. THEBERGE |) | |
| MARGUERITE K. POTTER, and the |) | |
| MARGUERITE K. POTTER REVOCABLE |) | |
| TRUST, individually and on behalf of those |) | |
| similarly situated, |) | |
| |) | |
| Plaintiffs, |) | |
| |) | |
| v. |) | <u>ORDER</u> |
| |) | |
| BANK OF AMERICA, N.A., ILLINOIS UNION |) | |
| INSURANCE COMPANY, SEATTLE |) | |
| SPECIALITY INSURANCE SERVICES, INC., |) | |
| LLOYD'S UNDERWRITERS AT LONDON, |) | |
| and CERTAIN UNDERWRITERS AT |) | |
| LLOYD'S LONDON, |) | |
| |) | |
| Defendants. |) | |

THIS MATTER IS BEFORE THE COURT on “Bank Of America’s Motion To Dismiss” (Document No. 31) and “Defendant Illinois Union Insurance Company’s Motion To Dismiss” (Document No. 35). These motions have been referred to the undersigned Magistrate Judge pursuant to 28 U.S.C. § 636(b), and immediate review is appropriate. Having carefully considered the motions, the record, and applicable authority, the undersigned will deny the motions as moot.

On October 30, 2012, with the consent of Defendants Bank Of America and Illinois Union Insurance Company, and approval of the Court, Plaintiff’s “Rule 23 Class Action First Amended Complaint And Jury Trial Demand” (Document No. 40) was filed. See (Document Nos. 38-39). It is well settled that a timely-filed amended pleading supersedes the original pleading, and that motions directed at superseded pleadings may be denied as moot. Young v. City of Mount Ranier, 238 F. 3d 567, 573 (4th Cir. 2001) (“The general rule is that an amended pleading supersedes the original pleading, rendering the original pleading of no effect.”); see also, Colin v. Marconi

Commerce Systems Employees' Retirement Plan, 335 F.Supp.2d 590, 614 (M.D.N.C. 2004) (“Earlier motions made by Defendants were filed prior to and have been rendered moot by Plaintiffs’ filing of the Second Amended Complaint”); Turner v. Kight, 192 F.Supp. 2d 391, 397 (D.Md. 2002) (quoting 6 Charles Alan Wright, Arthur R. Miller & Mary Kay Kane, Federal Practice and Procedure § 1476 (2d ed. 1990) (“A pleading that has been amended ... supersedes the pleading it modifies Once an amended pleading is interposed, the original pleading no longer performs any function in the case.”)); Brown v. Sikora and Associates, Inc., 311 Fed.Appx. 568, 572 (4th Cir. Apr. 16, 2008); and Atlantic Skanska, Inc., 3:07-CV-266-FDW, 2007 WL 3224985 at *4 (W.D.N.C. Oct. 30, 2007).

Based on the foregoing, the pending motions to dismiss will be denied as moot, without prejudice to Defendants filing motions to dismiss the First Amended Complaint, if appropriate.

IT IS, THEREFORE, ORDERED that “Bank Of America’s Motion To Dismiss” (Document No. 31) and “Defendant Illinois Union Insurance Company’s Motion To Dismiss” (Document No. 35) are **DENIED AS MOOT**.

SO ORDERED.

Signed: October 31, 2012



David C. Keesler
United States Magistrate Judge
